



Department of Justice

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JUSTICE DEPARTMENT REACHES SETTLEMENT WITH GEMSTAR-TV GUIDE FOR ILLEGAL PRE-MERGER COORDINATION

Department Obtains Record Civil Penalties of \$5.67 Million and Injunction

WASHINGTON, D.C. -- The Department of Justice today announced a settlement with Gemstar-TV Guide International Inc. that requires the company to pay a record \$5.67 million in civil penalties and agree to certain restrictions to resolve the Department's allegations that Gemstar and TV Guide had fixed prices, allocated customers, and violated pre-merger waiting period requirements prior to their merger in July 2000. The civil penalties are the highest ever paid in a case of this type known as "gun jumping."

The Department today filed a civil antitrust complaint in U.S. District Court for the District of Columbia along with a proposed consent decree that, if approved by the Court, would resolve the lawsuit.

The Department's complaint alleges that, starting in mid 1999, Gemstar and TV Guide agreed to stop competing for customers, decided together on prices and terms to be offered, and jointly managed their interactive program guide business during the mandatory pre-merger waiting period of the Hart-Scott-Rodino (HSR) Act of 1976. Under the Act, the parties are required to keep their operations separate so that the Department of Justice can review the merger. The Department said that their "gun jumping" conduct violated the HSR Act, as well as Section 1 of the Sherman Act.

“Merging parties must remain separate and independent until the end of the statutory waiting period,” said R. Hewitt Pate, Acting Assistant Attorney General in charge of the Department’s Antitrust Division. “A plan to merge in the future does not justify price fixing, customer allocation, or otherwise combining their businesses, while the Justice Department is investigating the competitive effects of the transaction.”

The proposed consent decree prevents Gemstar-TV Guide from engaging in similar conduct in the future, and gives customers that signed contracts with TV Guide during the pre-merger period a chance to rescind those contracts.

Prior to mid-1999, Gemstar and TV Guide competed to provide interactive program guides, or IPGs, to cable and satellite television service providers. IPGs allow television viewers to use the television remote to view program schedule information and select programs for viewing.

The complaint alleged that Gemstar and TV Guide stopped competing for some customers in June 1999, while they were negotiating a possible joint venture between their two companies. They subsequently announced that they would merge in October 1999, and filed a pre-merger notification under the HSR Act. Pending consummation of the transaction, and while the Department of Justice conducted its review of the transaction, Gemstar and TV Guide secretly agreed to allocate markets and customers between them, agreed on the prices and material terms that customers would be offered, and began jointly conducting their IPG business. The complaint alleged that this conduct lessened competition between TV Guide and Gemstar in violation of Section 1 of the Sherman Act, and gave Gemstar premature control over TV Guide in violation of the HSR Act.

The HSR Act requires companies planning acquisitions or mergers that meet certain thresholds to file pre-merger notification documents with the Justice Department and the Federal Trade Commission. The HSR Act also requires that the merging parties observe a mandatory waiting period, after which the companies may go ahead with the transaction. The purpose of the waiting period is to give the antitrust agencies an opportunity to investigate proposed transactions, and determine whether they would violate the antitrust laws, so that if the government determines that a transaction violates the antitrust laws, it may seek to block that transaction before the waiting period expires. Parties are subject to a maximum civil penalty of \$11,000 per day for each day they have been found to be in violation of the HSR Act.

The proposed Final Judgment, filed along with the complaint, seeks a total civil penalty of \$5.67 million, reflecting the maximum civil penalties of \$11,000 per day per company.

Gemstar-TV Guide, a Delaware corporation with its principal place of business in Pasadena, California, was formed when Gemstar merged with TV Guide in July 2000. It had annual revenues of about \$1.4 billion for the year ending December 31, 2001, and revenues for the fiscal year ending March 31, 2000, of about \$241 million.

TV Guide Inc., now a wholly-owned subsidiary of Gemstar-TV Guide International Inc., is a Delaware corporation with its principal place of business in Tulsa, Oklahoma. For the fiscal year ending December 31, 1999, TV Guide reported revenue of about \$1.1 billion.

As required by the Tunney Act, the proposed consent decree will be published in the *Federal Register*, along with the Department's competitive impact statement. Any person may submit comments concerning the proposed decree during a 60-day waiting period to James R. Wade, Chief, Litigation III, Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W.,

Washington, D.C. 20530. At the conclusion of the 60-day comments period, the court may enter the consent decree upon finding that it serves the public interest.

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